

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1148 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HARSIHBHAI BHOGILAL TAILAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1148 of 2003
MR ASIT M MEHTA for Petitioner No. 1
MS MEGHA R CHITALIA for Petitioner No. 1
MS.ARCHANA RAVAL, ADDITIONAL PUBLIC PROSECUTOR for
Respondent No. 1
RULE SERVED for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 02/09/2004

ORAL JUDGEMENT

The petitioner (hereinafter referred to as "the externee") has approached this Court with the prayer that the order of externment and confirmation thereof, passed by respondent no.1 be quashed and set aside.

2. The facts of the case are: The Deputy Commissioner of Police (North Zone), Vadodara City passed an order of externment on 24.06.2003 externing the petitioner from the City of Vadodara and the adjoining districts, viz. Vadodara Rural, Anand, Bharuch, Panchmahals and Narmada for a period of two years. It is stated in the order that, 'the externee was found to have been indulging in anti social activities and attacking the citizens on one excuse or the other and creating an atmosphere of terror, disrupting the public order; that the externee was indulging in the business of country liquor of low quality, likely to result into a hooch tragedy; that the people who do not approve and consent to the criminal and anti social activities of the externee were under constant fear and do not feel their lives and limbs safe'. In the order details of three offences registered against the externee are set out bearing C.R. No.III/ 363 of 2001 under sections 66(10)(b), 65(e) and 81 of the Prohibition Act; C.R. No.III-434/01 under section 66(1)(b) and 65(e) and 81 of the Prohibition Act; C.R. No.III-16/02 under section 66(1)(b), 65(e) and 81. Besides the externing authority has also taken note of three incidents dated 21.11.2002, 24.11.2002 and 28.11.2002. In all the three incidents whenever a citizen tried to interrupt the externee in his anti social activity, the deponent was beaten in public and the people gathered around the scene were threatened by taking out deadly weapon like, knife, etc. It is also recorded that on such occasions the public order was disturbed as there was hassle in the people and a feeling of terror was created.

3. The learned advocate Mr.Mehta appearing for the petitioner contended that the order is a stereotyped one, it is issued out of vengeance, as the petitioner was trying to help the friend, whose wife was harassed by the Police personnel, details of which are set out in para 10 of the petition; that the family of the externee consisting of his wife and three children is left without shelter and is living in fear and frustration. The learned advocate contended that there is a delay in passing the order of externment inasmuch as the cases which are relied upon are of the year 2001-02. Whereas the order is passed on 24th June 2003. In support of

this contention the learned advocate relied upon a decision of the Division Bench of this Court in the matter of Chothmal Sagansingh Rajput Vs. State of Gujarat and others, reported in 1988 (2) GLH 439. The said decision has no application to the facts of the present case. The proposition laid down by the decision is that, 'when there is delay in passing order of externment, after closing the arguments in respect of Show Cause Notice, and such delay is not properly explained, externment order is liable to be quashed'. In the present case after the Show Cause Notice was issued under section 59(1)(2) full opportunity was given by allowing the externnee to keep his advocate present on 13.06.2003. Though it is not stated by the learned advocate for the petitioner, assuming that hearing took place on that very day, i.e. 13.06.2003, order is passed on 24.06.2003. Thus, there is no delay in passing the order of externment. Hence this decision is of no assistance to the petitioner.

4. The learned advocate next relied on the decision of a Division bench of this Court in the matter of Suleman Husa Devji Vs. State of Gujarat & another, reported in 1989 (1) GLR 101. The proposition laid down by the decision is that, 'if there is non application of mind, the order of externment is liable to be quashed'. The Honourable Division Bench was pleased to hold that, 'when a mistake in the statement of an important fact, glaring enough, was noticed, the order of externment stood vitiated'. In the present case the learned advocate is not able to point out any such mistake much less of an important fact, glaring enough to establish non application of mind on the part of the externing authority. Therefore, this decision also does not help the petitioner.

5. The learned advocate made all general allegations against the order of externment saying that it is a stereo-typed order, the cases are of the year 2001-02 and all the witnesses whose statements are relied upon by the externing authority are on the same line. Therefore, it should be held by this Court that there is non application of mind on the part of the externing authority. The learned advocate also contended that three offences which are registered against the externnee are all pending trial and therefore, at this juncture it is not possible for anybody to conclude that the petitioner is guilty of the offences with which he is charged. The learned advocate could not convince this Court that a 'proved guilt' is a 'condition precedent' for passing an order of externment. Therefore, the

submissions of the learned advocate are found not only without any substance as the same are without any logic and liable to be rejected on that short ground. So far as the statements of the witnesses, narrating the incidents of three different dates, the learned advocate submitted that, 'what is alleged in these statements is that the externee took out knife or Astra but it is not stated that he wielded the same and injured any person. This Court is not able to appreciate the submission of the learned advocate inasmuch as it is not the requirement for passing an order of externment that the externee must have caused an injury to one or more members of the public and in absence of any such injury no order of externment can be passed.

6. The learned Additional Public Prosecutor Mr.A.Y. Kogje tendered an affidavit in reply sworn by the Deputy Commissioner of Police (North Division), Vadodara City stating that,

" On receipt of this evidence, documentary evidence along with of proposal, I have personally verified the reliability and genuineness of such evidence and having found substance in the evidence having satisfied myself, I have issued show cause notice on the petitioner and to enable the petitioner to make out the defence in an appropriate manner, he was supplied with, the grounds for externment and the legible copies of the documentary evidence on the basis of which the proceedings of externment were initiated. After giving sufficient opportunity of defence of the petitioner, and after pursuing (sic.) all the relevant record, the charges for externment are established and that, I was subjectively satisfied that, externment is the only option to curtail the activities of the petitioner and on the basis of this, the order of externment is passed." (emphasis supplied)

The deponent has also stated that,

" The petitioner even after being released on bail, in connection with the aforementioned three offences, the petitioner had continued his anti social activities by using force and violence and sufficient evidence to that effect is available on record and having considered this evidence and verified its genuineness and truthfulness and after having followed the principle of natural justice and

keeping in mind the constitutional right of the petitioner, I was satisfied to pass the order of externment."

7. So far as the contention raised by the petitioner-externee for which according to him the order of externment is passed is replied by the deponent in para 9 of the affidavit. The deponent has stated that,

" The Police authorities has not harassed any person nor the Police authorities have received any complaint from the friend of the petitioner or his wife, that the Police is unnecessarily harassing them." (emphasis supplied)

8. It may be noted that this affidavit in reply was served to the learned advocate for the petitioner on the last occasion, i.e. 06.08.2004. Till date, the learned advocate has not taken any step/ action to substantiate his averments made in para 10, where he has stated that,

" petitioner friend's wife is so much harassed that she has also lodged the criminal complaint against police and the petitioner has also lodged the magisterial complaint against two police but investigation have been held intentional to save the skin of the police and ultimately with intention to remove the petitioner from this area externment has planned."

9. If at all the learned advocate wanted to substantiate the aforesaid averments of filing of complaint against Police personnel, the same could have been produced before this Court, more particularly after this affidavit in reply was served to him.

10. In the result, this petition fails. The same is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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